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In re Application of  
Thomas H Stockmann  
Application Number 09/873,243  
Filed: June 5, 2001  
FOR: HYDRAULIC PLATFORM LIFT  
INCORPORATING POSITIVE DISPLACEMENT  
VALVE, AND POSITIVE DISPLACEMENT  
VALVE FOR HYDRAULIC PLATFORM LIFT

PETITION FOR SUPERVISORY  
REVIEW UNDER 37 CFR 1.181

This is in response to applicant's Petition 37 CFR 1.137(a) filed on November 12, 2003 to revive an application that went abandoned unavoidably. This petition is being treated as a petition for supervisory review under 37 CFR 1.181.

The petition is **DISMISSED**.

The history of the file is as follows:

- o A written restriction requirement with a shortened statutory period of one month was mailed on October 29, 2002.
- o On November 5, 2002 applicant responded with an amendment to the claims and in the paragraph that bridged pages 5 and 6 elected claims 13-20.
- o The amendment did not include a clean version of all of the claims, as required by 37 CFR 1.121(c)(1)(i). A letter was mailed on November 5, 2002 holding the amendment non-compliant and applicant was given 30 days to file a compliant amendment.
- o On November 22, 2002 applicant filed a clean copy and a marked-up copy of the claims but did not restate the election of claims 13-20.
- o On February 21, 2003, the examiner held the November 22, 2003 response to be non-responsive because this amendment did not include the election and gave applicant 30 days to respond.
- o Applicant did not respond in writing to the non-responsive letter. There is no record of the telephone conversation of March 11, 2003 that applicant refers to between the attorney and the examiner.
- o The application was held abandoned on September 9, 2003.
- o Applicant petitioned to revive the application on November 12, 2003. With this petition, applicant included a copy of the amendment filed on October 29, 2002. This is the amendment, which was held non-compliant on November 5, 2002. It is noted that the rules requiring amendments of include a copy of all the claims changed in June 2003.

- o Applicant filed an IDS on April 16, 2004 and a preliminary amendment on May 12, 2004. It is noted that the amendment filed on May 12, 2004 cancels claims 13-21 and adds new claims 22-46. This amendment does not state with claims are readable on the elected embodiment.

In summary, the examiner was in error when he held the amendment of November 22, 2002 non-responsive but it was applicant's failure to respond in writing to the letter holding the amendment non-responsive that was the reason the application was held abandoned.

It is noted that 37CFR 1.2 states:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

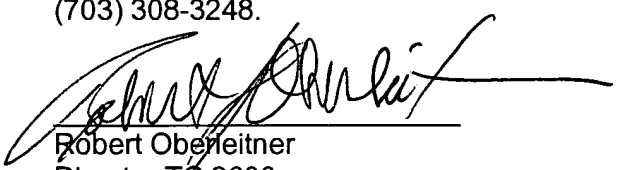
For a petition to revive under 37 CFR 1.137 to be granted, the following the requirements must be met:

- (a) *Unavoidable*. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
  - (1) The reply required to the outstanding Office action or notice, unless previously filed;
  - (2) The petition fee as set forth in § 1.17(l);
  - (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
  - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Applicant has not complied with item (1) of 37 CFR 1.137 and 37 CFR 1.2. A telephone call to the examiner is not sufficient to respond to a letter with a statutory period. The time period continues to run until applicant responds. Furthermore, the copy of the amendment included with the petition is not in compliance with the rules as changed in June of 2003. Further, the amendment filed on May 12, 2004 does not state how the claims are readable on the elected embodiment and therefore would not be a sufficient response. Therefore, if the application were to be revived, both amendments would be non-compliant.

**SUMMARY:** The petition is **DISMISSED**.

Inquiries related to this decision may be directed to Supervisory Patent Examiner Eileen D. Lillis at (703) 308-3248.



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